

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

REBECCA D. WOODARD and
JIMMY J. WOODARD,

Plaintiffs,

v.

FLAGSTAR BANK, FSB,

Defendant.

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Case No. 4:13cv179
(Judge Clark/Judge Mazzant)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On June 26, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant's Motion to Dismiss Complaint [Doc. #7] be denied. Defendant filed objections on July 9, 2013 [Doc. #13].

The court, having made a *de novo* review of the objections raised by defendant [Doc. #13], is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the denial of the Rule 12(b)(6) motion. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court as to the denial of the Rule 12(b)(6) motion. A motion under Rule 12(b)(6) tests the formal sufficiency of the plaintiffs' statement of their claim for relief, and cannot be used to resolve factual issues or the merits of the case. Dismissal under Rule 12(b)(6) is appropriate only if plaintiffs have not provided fair notice of their claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

Generally, motions to dismiss for failure to state a claim are viewed with disfavor. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). It is within the power of a court to require a party to produce evidence rather than lengthy, convoluted, and sometimes misleading arguments, before deciding that judgment should be granted. And, in this case, if the facts are as clear as defendant claims, a motion for summary judgment should accomplish the “just, speedy, and inexpensive determination” of this action. *See* Fed. R. Civ. P 1. However, the court does not agree to the finding that discovery is necessary at this time before proceeding to a motion for summary judgment. That decision would depend on the circumstances.

It is, therefore, **ORDERED** that Defendant’s Motion to Dismiss Complaint [Doc. #7] is **DENIED**.

So **ORDERED** and **SIGNED** this **13** day of **August, 2013**.



Ron Clark, United States District Judge